

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WANXIA LIAO,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. C 11-2494 CW

ORDER DENYING AS
MOOT DEFENDANTS
CNN'S AND DOW
JONES' MOTIONS TO
DISMISS, DOCKET
NOS. 31, 33, 40
and 41, AND THE
UNITED STATES'
MOTION FOR AN
ORDER SHORTENING
TIME, DOCKET NO.
43; SETTING
BRIEFING SCHEDULE
AND DEADLINE FOR
PLAINTIFF TO SERVE
PROCESS; VACATING
JANUARY 26, 2012
HEARING DATE; and
DENYING
PLAINTIFF'S
REQUEST FOR AN
ORDER OF RECUSAL,
DOCKET NO. 51

In this action, Plaintiff Wanxia Liao has brought suit against numerous governmental and non-governmental Defendants. On November 7, 2011, Defendants Cable News Network (CNN) and Dow Jones & Company, Inc, erroneously sued as The Wall Street Journal, moved to dismiss Liao's claims. Docket Nos. 31 and 33. Subsequently, Liao submitted an amended complaint, and CNN and Dow Jones moved to dismiss claims against them alleged in that

1 complaint. Docket Nos. 40 and 41. On December 12, 2011, the
2 action was reassigned to the undersigned and all matters then
3 scheduled for hearing, including the motions to dismiss, were
4 vacated. On December 14, 2011 CNN and Dow Jones refiled their
5 motions to dismiss the claims in the amended complaint. Docket
6 Nos. 47 and 49. In light of the above, the motions to dismiss
7 claims in the original complaint are denied as moot, as are the
8 first two motions to dismiss claims in the amended complaint.
9 Docket Nos. 31, 33, 40 and 41.

10 Because CNN's and Dow Jones' remaining motions to dismiss are
11 nearly identical to each other and the arguments were included in
12 their earlier motions to dismiss, Plaintiff shall file and serve a
13 consolidated opposition to both motions, not to exceed twenty-five
14 pages, on or before January 3, 2012. If Plaintiff does not file
15 an opposition by that deadline, the claims will be dismissed for
16 failure to prosecute. On December 27, 2011, Plaintiff shall also
17 submit her opposition, not exceed twenty-five pages, to the United
18 States' motion to declare her a vexatious litigant.

19 On or before January 10, 2012, CNN and Dow Jones may file a
20 consolidated reply, not to exceed fifteen pages, and the United
21 States may file a reply, not to exceed fifteen pages.

22 The Court will consider all three motions on the papers. The
23 January 26, 2012 hearing dates are vacated, and the United States'
24 motion for an order shortening time is denied as moot. Docket
25 No. 43.

26 It also appears that Plaintiff has not properly served
27 summons, the complaint and the amended complaint on Defendants
28 pursuant to Federal Rule of Civil Procedure 4. CNN and Dow Jones,

1 unlike the United States, have waived service of process by
2 appearing and litigating the action without raising the issue.
3 Within thirty days, Plaintiff shall serve all Defendants, except
4 for CNN and Dow Jones, pursuant to Rule 4, and submit proof of
5 service to the Court, otherwise her claims against those
6 Defendants will be dismissed for failure to prosecute.

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8 Finally, on December 16, 2011, Plaintiff filed a "Declaration
9 under § 144 of USC Bias or Prejudice of Judge to Disqualify
10 Claudia Wilken." The filing appears to be a request for an order
11 of recusal.

12 Title 28 U.S.C. § 455(a) states, "Any justice, judge, or
13 magistrate judge of the United States shall disqualify himself in
14 any proceeding in which his impartiality might reasonably be
15 questioned." Section 455(b) enumerates several additional
16 circumstances in which a judge shall disqualify him or herself
17 from a proceeding, including, where the judge has a personal bias
18 or prejudice concerning a party. See, e.g., 8 U.S.C. § 455(b)(1).
19 The standard applied under § 455 includes an objective test--"a
20 judge must recuse in any case where 'his impartiality might
21 reasonably be questioned'"--and a subjective test, requiring the
22 judge "'to determine whether he can be truly impartial when trying
23 the case.'" United States v. Spangle, 626 F.3d 488, 495-96 (9th
24 Cir. 2010) (quoting § 455(a) and United States v. Holland, 519
25 F.3d 909, 911-12 (9th Cir. 2008)). A judge's impartiality cannot
26 be questioned reasonably solely on the basis of a party's
27
28

1 dissatisfaction with the court's prior ruling. Such
2 dissatisfaction is the gist of Plaintiff's argument here. The
3 undersigned is able to be impartial in presiding over this case.
4 Having considered Plaintiff's request, the Court denies it.

5 IT IS SO ORDERED.

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8 Dated: 12/23/2011


CLAUDIA WILKEN
United States District Judge